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ABSTRACT

In 1972, the Maryland Equal Rights Amendment (ERA) became law in that state. The amendment provides that "Equality of rights under the law shall not be abridged or denied because of sex." This document surveys the legislative reforms that have been enacted to implement the ERA in the 12 years following the law's ratification. It also surveys significant rulings from Maryland's courts that use the ERA as a basis for their determinations. Under the headings of legislative implementation and judicial interpretation, the impact of the ERA is examined in a number of areas, including criminal law, domestic law, employment, education, child care, credit, insurance, and housing. Areas not affected by the ERA and the future impact of Maryland's ERA also are discussed.
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THE MARYLAND ERA

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MARYLAND COMMISSION FOR WOMEN

SO 030 168

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THE MARYLAND ERA

INTRODUCTION

In April 1972, the Maryland General Assembly passed an amendment to the Declaration of Rights of the Maryland Constitution known as the Equal Rights Amendment. On November 7, 1972, by a vote of 697,107 to 236,007, the voters of Maryland ratified the Maryland Equal Rights Amendment (ERA), and on December 5, 1972 the amendment, Article 46, Declaration of Rights of the Constitution of Maryland, became law. It provides:

"Equality of rights under the law shall not be abridged or denied because of sex."

This provision is very similar to the proposed federal ERA (which the Maryland legislature ratified in March 1972) and similar to the state ERA's in 15 other states.

In the twelve years since the ratification of Maryland's state ERA, numerous legislative reforms have been enacted. In fact, many more changes have been made in the law as a result of legislative action, than court challenges.

The fears of some that passage of the ERA would result in the courts being besieged with challenges of sexually-discriminatory statutes, have not been warranted in Maryland nor in other states which enacted state ERAs. Indeed legislative reform has made many court challenges to discriminatory laws unnecessary. Moreover, in the few instances where the courts have been called upon to decide sex bias claims, the State judiciary has used the Maryland ERA effectively to make sex discrimination illegal and give women and men equal rights under the law.

By conferring on courts and legislatures the specific *authority* and *motivation* to eliminate sex-based legal burdens and extend benefits to both sexes, the Maryland ERA has proved over the past twelve years to be an invaluable tool for ensuring that all individuals receive fair and equal treatment under the law.

THE IMPACT OF MARYLAND'S ERA

Women have been discriminated against throughout this country's history in virtually all aspects of their lives. One of the legal concepts brought from England to the colonies, which has been firmly entrenched in our legal system is that a married woman was viewed simply as an extension of her husband. When man and woman married they became one; and the one was the

husband. Moreover, the only appropriate and proper status for a woman was to be married and thus subject to the protection and authority of a man.

Obviously the roles of both men and women have changed a great deal since that legal concept was originated. Yet it has only been in recent years that our laws have begun to change to reflect the equal status of women and men in all aspects of life and work in American society. And much of the impetus for these changes in Maryland results from the existence of the Equal Rights Amendment in Maryland's Constitution.

The state ERA does not say that men and women are the same, but it does say that men and women should be treated equally "under the law." The state ERA, by guaranteeing equal rights regardless of the sex of the person, represents a mandate by the citizens of Maryland to the legislature to write new laws and to amend existing laws in accordance with the principles of equal rights for men and women. Over the past twelve years both types of action have taken place with regard to Maryland laws affecting such issues as marriage and divorce, employment, insurance, credit, criminal law, education and housing.

Legislative Implementation of the ERA

Since 1972, hundreds of bills have been introduced in the Maryland General Assembly to eliminate sex discrimination and unwarranted sex-based distinctions from the Annotated Code of Maryland. More than 60 of these pieces of legislation, many of them initiating comprehensive and broad-based reforms, have been enacted over the past twelve years. Listed below is a sampling of the legislation passed with regard to criminal law, domestic law, and such areas of interest as employment, education, child care, credit, insurance and housing.

A. Criminal Law

- The ERA was a strong impetus in the drafting and passage of reform legislation that sex-neutralized existing rape and sexual offense laws.
- Legislation was enacted which severely limits the admissibility and relevancy of a victim's prior sexual conduct and reputation in any court proceeding regarding rape or sexual offenses.
- Police training was required by legislation in the enforcement of the new rape and sexual offense law.

- The Department of Health and Mental Hygiene is now required to pay the cost of examination of victims of rape and sexual offenses when the examination is done for the purpose of establishing and gathering evidence about the crime.
- In 1975 the pandering statute (pandering is solicitation of sexual favors) was amended so that someone of either sex could be convicted of the crime, rather than just men.
- In 1976 the sexually discriminatory penalty for bigamy was eliminated.

B. Domestic Law

- In 1976 a bill was enacted which provided that a married woman could establish a domicile (i.e., determine where her legal residence will be) in the same way that a man can. Prior to that time, Maryland held to the case law doctrine that a married woman's legal residence, or domicile, was the domicile of the husband. That assumption affected a woman's right to vote. In another area, women who were Maryland residents and who wished to attend Maryland State colleges or universities but who were married to out-of-state residents prior to 1976, had to pay higher tuition rates than their fellow Maryland residents since their domicile was determined to be that of their husbands. This sexually discriminatory provision no longer exists in Maryland law.
- In spite of a 1972 Court of Appeals decision confirming the right of every person in the State to select his or her name if it is used consistently and non-fraudulently, several State laws relating to names on driver's licenses and legal names for purposes of voting and running for office were based on the assumption that a married woman's last name becomes her husband's last name upon marriage. In 1976, legislation was enacted removing the discriminatory provisions in the laws governing legal names for voter registration and running for office. By 1978 administrative roadblocks to name changes for divorced women with regard to driver's licenses had been removed.
- Prior to the ERA, only women could receive alimony in Maryland. In 1975, a bill was enacted which sex-neutralized the alimony statute, thus providing that husbands could be granted alimony. Since the wife is still generally the dependent spouse, the law continues to be

more applicable to women; however, alimony is now allowed for an economically dependent husband. Here is a good example of how the legislature has rewritten a previously discriminatory law by using need rather than gender as the standard of protection.

- The enforcement of child and spousal support awards has been a major concern of many custodial parents in Maryland who need that financial support to properly care for their children. In 1976, an earnings lien statute was enacted. Under that law the wages of a spouse who is in arrears in paying child or spousal support can be garnished and the money given to the custodial spouse. Also passed by the General Assembly was the Tax Refund Intercept Program by which tax refunds are diverted to the Child Support Enforcement Administration to pay child and spousal support arrears.
- Maryland's criminal non-support statute prior to 1977 made it a crime to desert or fail to support a wife. In 1978, a bill was enacted which provided that failure to support a spouse (of either sex) is a crime.
- In 1978 legislation passed regarding the disposition of marital property at the time of divorce. The new legislation provides some relief from the State's previously inequitable laws which provided that the spouse in whose name a piece of property was titled or who made the monetary contribution to its purchase was the sole owner in most situations. The new law, eliminates the common law doctrine that a wife owes her services to her husband and takes into account the non-monetary, but equally valuable, contributions of the homemaking spouse to the acquisition of property at the time of disposition of the marital property.
- The Protection from Domestic Violence Act was passed in 1980 allowing the courts to remove an abusing spouse from the home for a period from five (5) to fifteen (15) days when the behavior of that spouse is threatening to the other spouse or members of the household.
- Legislation was also passed requiring a law enforcement officer to accompany a spouse abuse victim back to his or her home to enable the victim to pick up clothes and other necessary items.
- In 1983 legislation amending the marital property law passed requiring that military pen-

sions be considered in the same manner as any other pension or retirement benefit. As interpreted under Maryland law, pensions are considered marital property for the purposes of property disposition in divorce and annulment.

- In 1984, a comprehensive revision of the Family Law Article of the Annotated Code was enacted. In addition to improving organization, eliminating obsolete provisions and inconsistencies, and correcting omissions, the revision amended or deleted sections of the Code that were sexually-discriminatory or unconstitutional in light of the State's Equal Rights Amendment.

C. Employment, Education, Child Care and Sexual Stereotypes

- Because employment brings economic independence and security, the eradication of sex discrimination on the job is important to all citizens. The state ERA has helped to change attitudes of employers, the public and women themselves about careers and occupations open to women. The Human Relations Article (Article 49B) governs employment practices in Maryland and prohibits sex discrimination in all areas of employment, hiring, and compensation of employees. The authority and responsibility of the Human Relations Commission has been augmented and expanded over the past twelve years to enhance its ability to identify and eliminate discriminatory practices in all aspects of employment.
- Since 1972 statutes pertaining to the State's civil service system have been made gender-neutral and affirmative provisions have been added, including the prohibition against the denial of promotional opportunities to employees because they are presently on maternity leave, and the institution of a policy encouraging part-time employment.
- In 1978 legislation was enacted to statutorily-mandate a State equal opportunity program.
- In 1977 legislation defining discrimination against pregnant women as sex discrimination in all areas of employment was enacted.
- In 1976 legislation was passed and funds appropriated for services to people who have remained out of the job market while being homemakers and who need assistance to prepare to re-enter the work force.

- Since 82% of domestic workers are women, it was important to focus on legislation governing domestic work. In 1973 domestic workers were included under the State's Workmen's Compensation law.
- Sex-based employer dress codes were prohibited by law in 1975.
- Legislation mandating the elimination of sex discrimination in Maryland public schools, colleges and universities was introduced several times in recent years, but unfortunately was not enacted. The presence of Maryland's ERA, however, and the inability to enact a legislative mandate in this area, were among the factors which encouraged the Maryland State Board of Education to enact Resolution No. 1981-9, *Sex Equity*, which prohibits sex discrimination in all aspects of education and employment in Maryland state public schools.
- Tax relief for child care expenses was available to Maryland citizens in the early 1970s, but was lost when Federal income tax laws changed in 1976. In 1978, the tax relief was restored, providing tax relief for child care expenses for both persons who itemize and those who do not.
- In 1984 the law governing the State Militia was made sex neutral so that now both women and men shall constitute the State Militia. Previously women could volunteer to join the Militia, but were not automatically a part of it.

D. Credit, Insurance, Housing and Tax Exemptions

- In the area of discrimination against women in the granting of credit, a beginning was made in 1974 with the passage of a bill requiring creditors to consider alimony in determining credit eligibility. In 1975, a bill embodying the major provisions of the newly enacted Federal Equal Credit Opportunity Act was passed, thus making Maryland one of the first states to provide a comprehensive definition for sex discrimination in credit. In 1976 and 1977 the Act was further strengthened by increasing the amount of damages and permitting private rights of action. It is now virtually identical to the Federal Act.
- In 1974 it was a common practice for health insurers to discriminate against pregnant women in a variety of ways including refusing to sell pregnancy coverage except under a "family plan," refusing to sell pregnancy coverage to

single women, and imposing restrictions on pregnancy benefits not generally applicable to all medical procedures. In 1975, two bills were passed which together prohibited discrimination against pregnant women regardless of their marital status in the granting of health insurance and the determination of benefits.

- In the area of insurance several bills were passed in 1976 and 1977 which assisted dependent spouses by requiring convertibility of group health policies to individual policies, and by requiring that notice be given to dependents of termination of coverage. Prior to the passage of these bills, at the time of divorce, dependent spouses often discovered that they were without insurance coverage since the coverage they had from their working spouses' group policy no longer covered them.
- Sexually discriminatory policies in the rental, sale, or financing of housing have been prohibited by statute since 1974.

Judicial Interpretation of the ERA

The comprehensive legislative reform done in the years since the adoption of Maryland's ERA has obviated the need for litigation challenging many previously sex-biased statutes. Maryland's courts have decided just a handful of cases under the ERA since its adoption. Listed below are the significant rulings from Maryland's courts which use the ERA as a basis for their determinations.

A. Criminal Law

- In 1975, prior to the passage of the sex neutral rape and sexual offenses legislation, a man convicted under the Maryland rape law claimed on appeal that the ERA invalidated that law because of its sexually discriminatory nature. However, the Court of Appeals upheld his conviction finding that protection of females from rape is a legitimate governmental objective and limitation of the classification of perpetrators to men to be rationally related to the achievement of that objective.¹
- The Court of Appeals in May 1984 declared unconstitutional a State law forbidding anyone running an entertainment hall to hire "female

sitters" to eat, drink or smoke with customers. The law violated the ERA because it "provides" different burdens upon men and women."²

B. Domestic Law

- In 1973, in *Miner v. Miner*, a husband challenged under the ERA, an award to his wife of alimony and fees in a divorce suit, made pursuant to a statute that permitted such awards to be made only to women. (The alimony law wasn't sex-neutralized by legislation until 1975.) However, the Court of Appeals held that the husband did not have standing to raise the issue because he had not sought and been denied alimony and fees. In other words, if a male had challenged the alimony law because he was not entitled to get it, he may have had standing, but as the payor of the alimony he had no standing to challenge the constitutionality of the law.³
- In three cases decided over a ten year period, the Court of Special Appeals considered challenges to the use of the maternal preference presumption in making custody awards. Under the maternal preference mothers were generally awarded custody of children five and under, and in most cases, of children who were as old as 14. In 1974, in *Cooke v. Cooke*, the court upheld the maternal preference as a "tie-breaker" when all other factors are equal. The father did not raise the ERA in his challenge to the court's award of custody to the mother and the court did not decide the issue on the basis of the ERA.⁴ However, shortly after the *Cooke* decision, the law was amended to expressly prohibit maternal preference. In a subsequent suit in 1978, *McAndrew v. McAndrew*, the use of maternal preference was challenged once again. This time, the Court of Special Appeals, citing the statute, concluded that the maternal preference is abolished under Maryland law and that there can be no "tie-breaker" in a custody case because there should never be a tie.⁵ In June 1984, the State's highest Court, the Court of Appeals, affirmed the Court of Special Appeals' 1978 abolishment of the maternal preference. This reaffirmation of the prohibition of the maternal preference was necessary, according to the Court of Appeals, because despite the explicit language in the law "Maryland courts have consistently expressed a preference for awarding the custody of young children to the mother."⁶

- In an opinion issued three weeks after the ratification of the ERA in 1972, the Maryland Attorney General discussed the right of married women who had assumed their husband's surnames to revert to their birth names on voter registration rolls. His opinion indicated that the right to do so is premised in common law and he noted that the fact of the ERA's ratification "confirms our opinion that both women and men have an equal right to adopt a name of their own choosing by which to become known and identified."⁷
- A major Court of Appeals ruling using the Maryland ERA, *Rand v. Rand*, held that both parents are responsible for the support of their children and that child support awards should be made on the basis of each parent's financial resources.⁸
- In *Coleman v. State*, the Court of Special Appeals ruled on a challenge to the State's criminal non-support statute which made it a misdemeanor for "any person" to desert or otherwise fail to support "his wife." The Court declared that the statute as it applied to spousal support was unconstitutional because of its sexually discriminatory nature in light of the ERA.⁹
- In *Bell v. Bell*, a wife attempted to cancel the separation and property settlement agreement she entered into with her ex-husband. She argued that because a confidential relationship existed between the parties at the time the agreement was made, the husband had the burden of proving the agreement was fair and not overreaching. The *Bell* court ruled that the previously-held presumption of the husband's dominance in a marriage could no longer stand.¹⁰ In *Eckstein v. Eckstein*, the Court of Special Appeals reiterated this ruling in stating "Since *Bell*, we have abandoned the previous presumption that the husband was the dominant figure in the marriage."¹¹
- In *Kline v. Ansell*, the Court of Appeals used the ERA to abolish the action of criminal conversation which was available to a husband against another person for seducing his wife, since the husband was viewed as having a property right to personal enjoyment of her.¹²
- In 1980 the Maryland Court of Appeals ruled in *Kemp v. Kemp* that under ERA the obligation to pay for a child's necessities is shared by both parents with their respective obligation based

on their ability to pay.¹³

- In 1981, the Court of Appeals ruled in *Condore v. Prince George's County* that the common law doctrine that a husband is responsible for his wife's necessities is unconstitutional in light of the ERA.¹⁴ It should be noted that, in this case, the constitutional issue was raised by a widow who was sued by a hospital for payment of her husband's medical expenses.

C. Employment, Education, Child Care and Sexual Stereotypes

- In 1973, in *Maryland State Board of Barber Examiners v. Kuhn*, cosmetologists of both sexes challenged on equal protection and State ERA grounds the constitutionality of statutes permitting barbers to cut the hair of both men and women.¹⁵ The Maryland Court of Appeals held that the cosmetologists lacked standing to raise the ERA. The court reasoned that the statute does not deny cosmetologists their rights on the basis of sex, since both men and women are cosmetologists and barbers and thus subject to the same statutory restrictions. The court indicated that the result might be different if the plaintiffs were male patrons who wanted to use the services of a cosmetologist.
- In 1983, the Maryland Attorney General was asked what the impact of the ERA was on the exemption for women from the oyster tonging license fee. The Attorney General concluded that the exemption was repealed as of the effective date of the ERA.

D. Credit, Insurance, Housing and Tax Exemptions

No court cases have been decided on any of these issues in light of Maryland's ERA. However, an Attorney General's Opinion was issued in 1983 regarding preferential property tax assessments for country clubs that discriminate on the basis of sex. In the Opinion the Attorney General stated that "the exclusionary practices of single sex country clubs receiving tax benefits under [Article 81] '§ 19 (e) violate . . . the Equal Rights Amendment."¹⁶ As of July 1984, a case challenging the constitutionality of the tax exemption scheme for single sex clubs under Article 81 § 19(e) was pending in Montgomery County Circuit Court. The action is based on Maryland's ERA and names as the defendant the only sex discriminatory club in Maryland which has ever taken advantage of the tax exemption.

AREAS NOT AFFECTED BY THE ERA

In general, the state ERA does not interfere in such areas of privacy as abortion, homosexual relationships, or family matters.

Privacy is an area that concerns all of us. The United States Constitution protects the right of every citizen to live a private life, and the United States Supreme Court has held that every citizen has a right to privacy. Thus, sex segregation in public restrooms, in prisons, and in other institutional sleeping quarters, and in living conditions in the armed forces is an expression of this right to privacy. Abortion, also is one of the specific rights of privacy which the United States Supreme Court has already guaranteed to women by federal Constitutional provisions. These issues of privacy are personal matters and are not affected by the ERA—either state or federal.

The state ERA is also not concerned with the relationship of two persons of the same sex. Indeed, courts in several states have held that state ERAs do not permit homosexual marriage.

Also, the ERA has not affected family stability or interfered with the operations of families in Maryland. In a family relationship where choices are made that one person is the wage earner while the other cares for home and children, the ERA does not interfere. The division of responsibility is essentially a personal matter based on a relationship between two people. What the ERA has done is afforded females opportunities already existing for males and vice versa.

THE FUTURE IMPACT OF MARYLAND'S ERA

Tremendous gains have been made in removing sex discrimination from the laws of Maryland since 1972. However, some gaps remain in the implementation process.

In addition, there are several areas where additional reforms are needed. For example, various provisions of the statutory law still contain gender-identification language. The Commission to Revise the Annotated Code should continue to work to remove such language from the Code.

In the areas of employment and education, legislation prohibiting sex discrimination and encouraging sex equity in all phases of instruction and employment in institutions of higher education in the State should be pursued, as well as policies on the State and local levels which enable workers to be paid equally for work of comparable value. Also, reform is needed in the areas of insurance and pension laws.

It is likely that more legislation will be enacted in the

coming years and further litigation will take place applying the ERA to various sexually-discriminatory laws still on the books of Maryland. We have come a long way, but we still have further to go before all the laws, regulations and policies affecting the citizens of the State of Maryland treat men and women fairly, justly, and equally in all areas of their lives.

¹ *Brooks v. State*, 24 Md. App. 334, 330 A.2d 670 (1975).

² *Turner v. State*, 299 Md. 565, 474 A.2d 1297 (1984).

³ *Miner v. Miner*, 19 Md. App. 154, 310 A.2d 208 (1973). In *Colburn v. Colburn*, 20 Md. App. 346, 316 A.2d 283 (1974), a similar case decided the following year, the Court of Special Appeals agreed with the *Miner* decision.

⁴ *Cooke v. Cooke*, 21 Md. App. 376, 219 A.2d 841 (1974).

⁵ *McAndrew v. McAndrew*, 39 Md. App. 1, 382 A.2d 1081 (1978).

⁶ *Elza v. Elza*, 300 Md. 51, 475 A.2d 1180 (1984).

⁷ 57 Opinions of the Attorney General 234 (11/30/72).

⁸ *Rand v. Rand*, 280 Md. 508, 374 A.2d 900 (1977).

⁹ *Coleman v. State*, 37 Md. App. 322, 377 A.2d 553 (1977).

¹⁰ *Bell v. Bell*, 38 Md. App. 10, 379 A.2d 419 (1977).

¹¹ *Eckstein v. Eckstein*, 38 Md. App. 506, 379 A.2d 757 (1978).

¹² *Kline v. Ansell*, 287 Md. 585, 414 A.2d 929 (1980).

¹³ *Kemp v. Kemp*, 42 Md. App. 90, 411 A.2d 1028 (1980).

¹⁴ *Condore v. Prince George's County*, 289 Md. 516, 425 A.2d 1011 (1981).

¹⁵ *Maryland State Board of Barber Examiners v. Kuhn*, 207 Md. 496, 312 A.2d 216 (1973).

¹⁶ *Opinion No. 83-031* (August 3, 1983), 68 Opinions of the Attorney General (1983).

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